

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 17-cr-20233

Plaintiff,

HON. MATTHEW F. LEITMAN

v.

BERTRAM C. JOHNSON,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its attorneys Matthew Schneider, United States Attorney, and Frances Lee Carlson and J. Michael Buckley, Assistant United States Attorneys, submits that a sentence within the guideline range of 6 to 12 months' imprisonment is sufficient but not greater than necessary to achieve the purposes set forth in 18 U.S.C. § 3553(a)(2). This sentence will send a clear message that corruption by those who elected and sworn to represent the best interests of the public will be met with serious consequences.

I. RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. Conviction

On March 2, 2018, pursuant to a Rule 11 Plea Agreement, defendant Bertram C. Johnson pled guilty to one count of conspiracy to commit theft from a federally funded program, in violation of 18 U.S.C. §§ 371 and 666(a)(1)(A).

Johnson is scheduled to be sentenced on September 6, 2018 at 10:00 a.m.

B. Defendant's Corrupt Conspiracy (Count 1)

From January 1, 2011 through March 2, 2018, defendant Bertram C. Johnson was a Senator for the State of Michigan's Second Senate District, which encompasses northeast Detroit, Highland Park, Hamtramck, Harper Woods, and all five Grosse Pointe communities. The Michigan legislature, which consists of the House and the Senate, comprises the government of the State of Michigan along with the judicial and executive branches. As a legislator, and also as a member of the Senate Appropriations committee, Johnson had the authority to decide where State of Michigan dollars, including those received from federal funding sources, were spent. As a Senator, Johnson also had the authority to vote on appropriations that funded the legislature. Johnson was therefore an agent or employee of the government of the State of Michigan.

As a Senator, the defendant had the discretion and authority to hire staff members for his senate office within the constraints the budget set by the

legislature. Johnson, as the employing official of his staff, was ultimately responsible for approving, or causing to be approved the bi-weekly timesheets of his staff. According to Michigan Senate policy, “[s]ince time cards are official documents, recording of time must accurately reflect actual hours worked” and “[p]art-time, hourly employees are required to record their hours worked each day.” Michigan Senate Policy, EP 03. Also, “no Senator or employee shall convert for person, business and/or campaign use unrelated to Senate business, any...staff provided by the Senate or State of Michigan.” Michigan Senate Policy, GEN 04.

In the fall of 2013, Johnson faced many pressing debts. He owed tuition and other fees for his son’s 2013-14 private school tuition at University of Detroit Jesuit High School. Each month, the balance he owed increased with more school expenses and late fees due to non-payment, reaching close to \$5,000 by December 2013. *See* Ex. 1, U of D Jesuit High School billing statement excerpt. Also, Johnson himself had enrolled in two classes at University of Detroit Mercy during the Fall 2013 term. As of August 26, 2013, he owed \$18,160 in tuition and registration fees. Johnson was assessed a \$200 late fee in September due to non-payment. *See* Ex. 2, U of D Mercy Transaction Summary Report. Johnson also owed almost \$30,000 to a political consulting company; the owner of that company had been applying constant pressure throughout August and September 2013 and threatening legal action. *See* Ex. 3, Paladin Memo and Invoice.

Faced with mounting personal financial pressure, in October 2013, Johnson approached Glynis Thornton and asked to borrow \$30,000 in cash. When Thornton refused, Johnson then asked to borrow \$20,000 in cash and she again refused his loan request. Johnson then asked for a loan of \$10,000. Thornton finally relented. On or about October 21, 2013, Thornton loaned Johnson \$10,000 in cash. Johnson specifically requested cash and did not want to sign a promissory note or any other promise to repay, because he was a public official.

Thereafter, between October 21, 2013 and March 2014, Glynis Thornton on various occasions sought repayment of her personal loan to Johnson, but Johnson was unable to repay Thornton. Sometime in March 2014, Johnson devised a way to repay Thornton his personal loan using State of Michigan funds. He proposed that he would put Thornton on his Michigan Senate Office payroll for a one-time payment in the amount of \$10,000. Thornton agreed to Johnson's plan for repayment.

On March 28, 2014, at the State Senate in Lansing, Michigan, Johnson added Thornton to his senatorial staff as a "Community Liaison" and personally completed and filed a Personnel Action Form or "PAF" which he submitted to the State of Michigan. This "Community Liaison" position on Johnson's senatorial staff was never publicly posted or advertised, nor were resumes or applications solicited.

In Thornton's "PAF," Johnson stated that Thornton was to be paid for 30 hours per week at a rate of \$22.00 per hour. And so her ghost employment began on March 28, 2014. Now having a reliable, albeit fraudulent, mechanism to repay Thornton the money he owed, on or about March 31, 2014, Johnson asked Thornton for an additional personal loan of \$4,000. Thornton agreed.

To disguise this personal loan to Johnson, Glynis Thornton directed Paulette Horton, an employee of Thornton's company, "MADE Consulting, Inc.," to issue and cash a MADE check payable to Horton's own consulting company, "Picking Up the Pieces, Inc.," and to give \$4,000 in cash to Johnson. On March 31, 2014, Paulette Horton complied fully with Thornton's instructions, and gave Johnson \$4,000 in cash.

Meanwhile, Thornton began to receive bi-weekly payments from the State of Michigan ranging from \$1,320 to \$1,160 per pay period, purportedly for work performed as a "Community Liaison" for Johnson, when in fact Thornton performed no work as a member of Johnson's staff. Other employees of Johnson's senate office had no idea what Thornton did to earn her State of Michigan pay, nor did they know of any work she had performed. While other staff members were assigned to attend various events and appeared countless times on the office Google calendar, Thornton's name was notably absent.

On October 27, 2014, while Thornton continued to receive bi-weekly payments from the State of Michigan as arranged by Johnson, he again approached Thornton and asked for a personal loan of \$3,000 in cash, to make a last-minute payment of his property taxes. Thornton complied, and loaned Johnson \$3,000 in cash. Johnson came to Thornton's home, picked up the \$3,000 in cash and went directly to the Wayne County Treasurer's Office to pay his property tax. A short time later, Johnson personally repaid Thornton the \$3,000.

Thornton continued to receive bi-weekly payments from the State of Michigan, until on or about January 1, 2015, when, as known to Johnson, Thornton provided no work to justify the payroll payments. In total, Thornton received \$23,204.52 in payments from funds under the care, custody, and control of the State of Michigan, which Johnson stole and obtained by fraud in order to repay Thornton for the money she loaned him.

II. SENTENCING GUIDELINE CALCULATIONS

As reflected in the presentence investigation report, the probation department calculated a guideline range of 6 to 12 months based on a total offense level of 10 and a criminal history category of I. Both the government and the defendant agree with the probation department's guideline calculation.

III. SECTION 3553(a) FACTORS

Through 18 U.S.C. § 3553(a) Congress has provided the relevant objectives and factors to be considered by sentencing courts in imposing a “sentence sufficient, but not greater than necessary.” Those objectives are: (1) the nature and circumstances of the offense, and the history and characteristics of the defendant; (2) the need for a sentence to reflect the basic aims of sentencing (including retribution, deterrence and rehabilitation); (3) the kinds of sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need for restitution. These factors support a guideline sentence.

A. Nature and Circumstances of the Offense

Defendant Johnson devised and participated in a corrupt conspiracy that betrayed the trust of the people of the State of Michigan, using the authority granted to him by his public office in order to pay back his personal debts. Johnson, who had the authority to hire staff for his Senate office, corruptly hired Glynis Thornton in order to repay personal loans instead of “faithfully discharg[ing] the duties of the office of Senator in the State Legislature...according to the best of [his] ability.” State of Michigan Oath of Office. At all times relevant to his corrupt activities, defendant Johnson was a Senator for the State of

Michigan. Rather than honor the oath he took to faithfully discharge his duties, he subverted the oath for his own benefit. He was a member of the Senate Appropriations Committee, while at the same time compromising the integrity of how public funds were spent.

And, Johnson knew that what he was doing was wrong, especially given his elected position. During a consensual recording in November 2015, when Glynis Thornton suggested that she come clean to the FBI about her ghost employment, Johnson balked.

THORNTON: ...Would it be so bad if I said I loaned you money? And you gave me the, gave me a job, or—

JOHNSON: Pfft.

THORNTON: Why?

JOHNSON: (Laughs)

THORNTON: I mean, what's wrong with that though?

JOHNSON: Glynis, listen—

THORNTON: Why? I mean, why can't I say that? I mean if I just be honest about it and just make it totally innocent. I mean, I'm not, I wouldn't put you in a position where it would jam you. Is that so wrong?

JOHNSON: Glynis, first of all, I'm not supposed to be a topic of conversation. When it comes to what, what they're looking at. I'm just not supposed to be a topic, a topic of conversation. I'm not supposed to be a topic of conversation when it comes to, so, so—

....

THORNTON: ...but it's, why couldn't I just come clean? I would feel better, and then, if you come clean, it should be, it should be a wash. It should be okay.

JOHNSON: No, because I can't.

THORNTON: I mean, what's, what's the prob- I mean honest to God, what's the problem?

JOHNSON: I am a public official. It was never supposed to be, never supposed to be (unintelligible).

THORNTON: Right.

JOHNSON: (Unintelligible)

THORNTON: Would I be in trouble?

JOHNSON: Yeah.

THORNTON: Both of us?

JOHNSON: Yes.

Defendant Johnson violated the public's trust and its confidence in its public officials. His criminal conduct and resulting resignation left the nearly 55, 000 people of his district without representation for much of 2018.¹ The seriousness of his conduct warrants the imposition of a term of imprisonment.

¹ Jonathan Oosting, *Johnson's Mich. Senate seat to sit empty until November.*, www.detroitnews.com, March 12, 2018, <https://www.detroitnews.com/story/news/politics/2018/03/12/bert-johnson-state-senate-seat-special-election/32859383/>.

B. History and Characteristics of Defendant Johnson

Johnson will undoubtedly argue that his years of public service warrant a variance from the applicable Guideline range. While he has served the public throughout his life, such claims cannot outweigh the great disservice, violations of public trust, and utter disregard to the rule of law displayed by the defendant. Moreover, rather than a mitigating factor, defendant Johnson's public service could be viewed as an aggravating factor because he used the knowledge of the system from his years of public service and abused the public trust and used his public office for personal gain.

C. Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment, and Affording Adequate Deterrence

Johnson's corrupt theft of State of Michigan payroll funds was not a crime resulting from a single decision or a momentary impulse. Every two weeks, he approved or caused to be approved timesheets that fraudulently reported that Thornton had worked the full 60 hours, when in fact, she had not worked at all. Johnson's conduct was not spontaneous, but, instead, involved careful coordination and planning, and repeated acts of deceit over a number of months. Johnson engaged in an egregious act of corruption that betrayed the public's trust for personal gain. A sentence within the guideline range fits his crime. Such a sentence would send a strong message to all current and future government officials and

employees that corruption and violations of the public trust will not be tolerated.

See, e.g., United States v. Anderson, 517 F.3d 950, 996-97 (7th Cir. 2008)

(highlighting need for general deterrence in public corruption prosecutions).

D. Sentencing Disparities

The purpose of the Sentencing Guidelines is to ensure “reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders.” U.S.S.G. Ch. 1.3.

Moreover, “proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.” *Id.*

Therefore, the Guidelines are the most accurate barometer for preserving uniformity among sentences.

CONCLUSION

For all of the above reasons, the government respectfully requests that the Court impose a sentence within the guideline range for defendant Johnson.

Respectfully submitted,

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Dated: August 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2018, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

John A. Shea
Attorney for Bertram C. Johnson

s/Frances Lee Carlson
FRANCES LEE CARLSON
Assistant United States Attorney

Dated: August 30, 2018